



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 230119-0019]

RIN 0648-BL59

International Fisheries; Pacific Tuna Fisheries; 2022-2024 In-season Action

Announcement Procedures for Commercial Pacific Bluefin Tuna in the Eastern

Pacific Ocean; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: NMFS is correcting a final rule for in-season action announcement procedures for commercial Pacific bluefin tuna (PBF) that appeared in the **Federal Register** on January 27, 2023. In that rule, NMFS did not address a public comment because of an error on the deadline for comment submissions. This correction responds to the comment, which does not change the action in the January 27 final rule.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Celia Barroso, NMFS, 562-432-1850, Celia.Barroso@noaa.gov.

SUPPLEMENTARY INFORMATION:

On January 27, 2023, NMFS published a final rule on in-season action announcement procedures for PBF (88 FR 5273). Due to an error on the deadline for comment submissions, NMFS did not see, and therefore did not respond, to a public comment submitted during the public comment period of the proposed rule. Upon

learning of this error, NMFS immediately took steps to issue this correction to the final rule that addresses the comment.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Tuna Conventions Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Section 553(b)(B) of the Administrative Procedure Act (APA) authorizes agencies to dispense with notice and comment procedures for rules when the agency for “good cause” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” The Assistant Administrator for Fisheries determined that there is good cause to waive prior notice and an opportunity for public comment on this action because this action is simply to correct an inadvertent error in the January 27 final rule (88 FR 5273) that would not change the final action. Immediate correction of the error is necessary to adequately respond to public comments received during the proposed rulemaking stage in accordance with the APA.

Under section 553(d) of the APA, an agency must delay the effective date of regulations for 30 days after the date of publication, unless the agency finds good cause to make the regulations effective sooner. For the same reasons stated above, the Assistant Administrator for Fisheries has determined good cause exists to waive the 30-day delay in the date of effectiveness. This correction only addresses a public comment but does not change the action in the January 27 final rule, which became effective on February 27, 2023, and NMFS does not anticipate in-season action on PBF until spring 2023 at the earliest. Delaying effectiveness of the January 27 final rule due to this correction would result in confusion among fishery participants and increase the risk of exceeding PBF catch limits, and would therefore be contrary to public interest.

The Regulatory Flexibility Act, 5 U.S.C. 603 and 604, requires an agency to prepare an initial and a final regulatory flexibility analysis whenever an agency is required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking. Because NMFS found good cause under section 553(b)(3)(B) of the APA to forgo publication of a notice of proposed rulemaking, the regulatory flexibility analyses described in 5 U.S.C. 603 and 604 are not required for this rulemaking.

Paperwork Reduction Act

This final rule contains no collection of information requirements under the Paperwork Reduction Act of 1995.

Correction:

In FR Rule Doc. 2023-01447 (88 FR 5273), appearing in the **Federal Register** on Friday, January 27, 2023, the following corrections are made:

1. On page 5273, in the second column, in the second paragraph, the last sentence is revised to read, “NMFS received two public comments on the proposed rule, which are addressed later in this preamble.”

2. On page 5273, in the third column, above the **Classification** section, a new section is added to read as follows:

Public Comments and Responses

NMFS received two public comments on the proposed rule. One comment, from an individual commenter, voiced general support for management actions to conserve Pacific bluefin tuna (PBF). The other comment, from the Center for Biological Diversity, asserted that NMFS has failed to consider the impacts to protected species of the proposed rule and asked NMFS to delay publication of the final rule until an updated Endangered Species Act (ESA) consultation on the impacts of the drift gillnet fleet on

humpback whales is “complete.” NMFS has considered the comment and will not change the final rule to implement the previously described revision in regulations. The comment included two main components, and NMFS’ response to each component is below.

Component 1: The commenter asserts that, because drift gillnet catches of PBF have increased, NMFS mischaracterized these catches as “incidental.” The commenter also states that this is illustrated by NMFS characterizing the purse seine fleet as targeting PBF when the majority of the purse seine-caught landings, or tuna landings, are not PBF.

NMFS Response to Component 1: NMFS acknowledges the drift gillnet fleet off of the West Coast catches and retains various marketable species, including PBF. Drift gillnet has a long history of catching PBF incidentally, and it has always been a marketable species that contributes to drift gillnet revenues (see Pacific Fisheries Information Network [PacFIN] Apex Reports Highly Migratory Species SAFE Reports 003 and 009 at <https://pacfin.psmfc.org/>). PBF have become more abundant in U.S. waters in recent years and, therefore, are more likely to be caught. Additionally, this coincides with a reduction in landings (PacFIN) in recent years and anecdotal evidence from fishermen that swordfish were locally less abundant off California in 2021 and 2022, which may be the cause for the landings composition presented in the comment.

The final rule had two parts: 1) amend the in-season action announcement procedures to allow for quicker in-season action that would improve NMFS’ ability to remain within the internationally-agreed PBF catch limit, and 2) disincentivize regulatory discards by allowing fish already on board to be landed within 24 hours of any in-season actions to reduce trip limits.

Regarding the second part, only the purse seine fleet is likely to be affected. The existing trip limit scheme in accordance with a final rule published on August 5, 2022 (87 FR 47939) that is applicable to 2022-2024 reduces the trip limit as cumulative catches in the year reach thresholds. The lowest trip limit in 2023-2024 will be 3 metric tons, after

which the next threshold reached would result in the fishery closing. In recent years, no drift gillnet (DGN) vessel has caught more than 3 mt of PBF in a single trip. Therefore, the component allowing 24 hours to land fish after in-season actions to reduce trip limits would not apply to DGN because that fleet would only be impacted by the in-season action to close the fishery. Furthermore, as noted in the proposed rule, allowing vessels to land or transship fish on board for 24 hours after the in-season action notice is consistent with the policy in the event of a fishery closure, which has been in place since 2014, and reduces the likelihood of regulatory discards. NMFS will consider using a different term other than “incidental” to describe the DGN PBF fishing activities in future rulemakings; however, any changes in the use of the term will not impact implementation of the final rule.

Regarding the catch composition of the coastal purse seine fleet, NMFS notes that catches of PBF have been restricted due to an international rebuilding plan, whereas there are no international catch limits for yellowfin tuna. There are periods where the coastal purse seine fleet chooses to target species other than PBF (*e.g.*, yellowfin tuna, market squid) to make a larger profit, and it is not uncommon for a purse seine vessel to catch more yellowfin tuna than PBF on a single trip because NMFS has imposed restrictive trip limits for PBF. Ultimately, the impacts of the rule will not change whether a fleet targets PBF or catches and retains PBF incidentally because the trip limits and in-season action procedures apply regardless of intention when PBF was caught.

Component 2: The commenter argues that an ESA consultation is necessary because the proposed rule “could increase the time that humpback whales co-occur with the California drift gillnet fishery, and thus increase entanglement risk.” The commenter notes that “[t]he proposed rule states that the intent behind the revised announcement procedures is efficiency: ‘to allow for quicker in-season action in part because the Pacific bluefin tuna fishery may catch a lot of the catch limit in a short period of time.’” The

commenter goes on to assert: “A more efficient fishery—one that is managed to allow a lot of Pacific bluefin tuna caught in a short period—is not necessarily good for conservation. Specifically, indiscriminate fishing increases the risk of entanglement for humpback whales. NMFS could reduce the risk of entanglement of humpback whales by limiting the fishery well before the vessels approach the bluefin tuna catch limits.”

NMFS response to Component 2: Contrary to the commenter’s suggestion, taking quicker in-season action will neither result in a more efficient fishery in which a lot of PBF can be caught in a short period, nor will it result in “indiscriminate fishing” that increases the risk of entanglement for humpback whales. This final rule simply increases NMFS’ ability to take in-season action quickly to reduce trip limits or close the fishery in a manner that aids the United States in adhering to international catch limits while avoiding regulatory discards.

With respect to the commenter’s suggestion that NMFS could reduce the risk of entanglement of humpback whales by limiting the fishery well before vessels approach the catch limits, NMFS views this comment as in part directed to the existing trip limit scheme applicable to 2022-2024 (87 FR 47939, August 5, 2022), as well as the announcement procedures in the proposed rule (87 FR 70766, November 21, 2022). The trip limit scheme was modeled on the management approach in 2021 (*e.g.*, trip limits, quicker in-season action announcement, electronic landing receipts). This was recommended by the Pacific Fishery Management Council (PFMC) at its November 2021 meeting.

The PFMC recommendation and original proposed rule for 2022-2024 regulations intended to have quicker in-season action announcement procedures to support operational flexibility and reduce the risk of exceeding the internationally-agreed catch limits. NMFS proposed the new in-season action procedures to adhere to the intent behind the Council recommendation (87 FR 70766, November 21, 2022). Additional

history on the more recent approaches to managing PBF may be found in the proposed rule for the 2021 regulations (86 FR 279, January 5, 2021) and the proposed rule for the 2022-2024 regulations (87 FR 12409, March 4, 2022) for PBF. Among other things, these proposed rules explain that relying solely on the **Federal Register** notice for in-season action contributed to the United States exceeding its internationally-agreed catch limit in 2017. Since then, NMFS implemented reduced trip limits and, more recently, trip limits that reduce as cumulative catches for the calendar year, quicker in-season action procedures, and a requirement for PBF buyers to submit electronic landing receipts within 24 hours of a landing. Reducing trip limits or closing a fishery earlier is outside the scope of this proposed rule because the thresholds to take in-season action have already been implemented with the August 5, 2022, final rule (87 FR 47939). While it is uncertain whether the current characteristics of the PBF fishery will continue, it is imperative we manage the fishery in a manner that improves NMFS' ability to adhere to international catch limits.

3. On page 5273, in the third column, in the **Classification** section, the paragraph under the header *Economic Analyses* is corrected to read:

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that, for purposes of the Regulatory Flexibility Act, this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No information received during the public comment period changes the action from the proposed rule or NMFS' analysis. The Center for Biological Diversity suggested that drift gillnet vessels are incorrectly characterized as catching Pacific bluefin tuna incidentally, however, whether characterized as incidentally catching or targeting Pacific bluefin tuna in relatively small quantities does not change the factual basis for the

certification published. Therefore, the initial certification published with the proposed rule—that this rule is not expected to have a significant economic impact on a substantial number of small entities— remains unchanged. As a result, a regulatory flexibility analysis was not required and none was prepared.

There are no other corrections to the final rule published on January 27, 2023.

Dated: March 22, 2023.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

[FR Doc. 2023-06337 Filed: 3/27/2023 8:45 am; Publication Date: 3/28/2023]